UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF CALIFORNIA

In re	Involuntary Case No. 91-3-4765-LK/MM
VIRGINIA PON, et al.,	
Alleged Debtors.	
GOLDEN DIAMOND INVESTMENTS, a California limited, partnership, Alleged Debtor,	Involuntary Case No. 91-3-4979-LK/MM
VIGINIA QUAN, individually and aka V-2 Investments,	Involuntary Case No. 91-3-5114-LK/MM
Alleged Debtor.	MOTION TO QUASH SUBPOENAS AND MOTIONS IN LIMINE

A. Pon's Motion to Quash Subpoena

- 1. Summary: Quash subpoena served on November 13, 1992 requesting original documents.
- 2. Disposition
 - a. Grant with respect to:
- 1) Documents the authenticity of which Pon is not objecting to, including documents that are a matter of public record (recorded Power of Attorney, filed declaration); and
- 2) Documents over which Pon has neither custody nor control, including original of D & K/Lau Construction contract and originals of correspondence of which Pon was neither author nor recipient.

- Deny with respect to documents to which the Best Evidence Rule (FRCP 1002) b. applies.
- 3. Authority

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- a. FRCP 45(c)(3)(A): quash if subpoena subjects person to undue burden.
- b. Premium Service Corp., 511 F.2d 225, 229 (9th Cir. 1975) (quash where need of subpoening party is outweighed by burden and invasion to responding party)
- Donoghue v. Orange County, 848 F.2d 926, 931 (9th Cir. 1988)(quash where c. subpoena served one week before trial and argued on second day of trial; request was extensive and far-reaching; counsel failed to conduct discovery; and impossible to comply with demand at such late date)
- d. FRCP 1003: A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.
- U.S. v. Skillman, 922 F.2d 1370, 1375 (9th Cir. 1990), cert. denied, 112 S.Ct. 353 e. (1991)(duplicate admissible where no genuine issue as to authenticity, and no evidence that original was lost in bad faith)
- 4. Sanctions: FRCP 45(c)(1) provides that Court shall enforce attorney's duty to take reasonable steps to avoid imposing undue burden or expense and impose on breaching party or his attorney appropriate sanctions, which may include, but are not limited to, lost earnings and reasonable attorneys' fees.

B. Pon's Motions in Limine

- 1. Exclusion of Expert Testimony of Iain McDonald
 - Disposition: Deny a.
 - b. Authority
- 1) FRE 702: If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion

or otherwise.

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- 2) Wood v. Stihl, Inc., 705 F.2d 1101, 1109 (9th Cir. 1983)(trial court vested with broad discretion concerning admission or exclusion of expert testimony; manifest error standard). But see Pon's Brief re admission of attorney expert testimony)
- 2. Exclusion of D & K Exh, H, L, BT (D & K/Lau Const. Contract) for failure to satisfy best evidence rule.

Disposition: Grant

- FRCP 1003: A duplicate is admissible to the same extent as an original unless (1) a a. genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.
- <u>U.S. v. Skillman</u>, 922 F.2d 1370, 1375 (9th Cir. 1990), cert. denied, 112 S.Ct. 353 b. (1991)(duplicate admissible where no genuine issue as to authenticity, and no evidence that original was lost in bad faith)
- FRCP 1004: duplicate OK if original lost or destroyed, but Kissinger testified he has c. original.
- 3. Exclusion of documents not produced in pretrial discovery and purporting to evidence D & K and Kissinger's prepetition knowledge re Pon's financial condition.

Disposition: Deny

C. Scope of Waiver of Attorney/Client Privilege

1. Chevron v. Pennzoil, 974 F.2d 1156, 1162 (9th Cir. 1992)(disclosure of information resulting in waiver of privilege constitutes waiver only as to communications about the matter actually disclosed; where party raises claim [or defenses] whihe in fairness requires disclosure of protected information, privilege may be impliedly waived)